



July 27, 2016

VIA EMAIL

Freedom of Information Officer
U.S. Environmental Protection Agency Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590
R5foia@epa.gov

**Re: FOIA Request re Opacity Violations at American Electric Power's Conesville,
Ohio Power Plant**

Dear Records Custodian:

On behalf of the Sierra Club, I am writing to request that the U.S. Environmental Protection Agency ("EPA") provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the EPA regulations at 40 C.F.R. § 2.100, *et seq.*

The Sierra Club is the nation's oldest environmental organization. It is dedicated to the protection and preservation of the natural and human environment. The Sierra Club is committed to solving the pressing environmental and health problems associated with the mining, burning and disposal of coal and its combustion by-products.

Documents Requested

Please provide copies of the following records:

All documents that support or underlie EPA's determination—reflected in the Notice of Violation and Finding of Violation, dated June 6, 2016—that American Electric Power has violated and continues to violate the Ohio SIP, NSPS Subpart D, and the Conesville plant's Title V permit by exceeding 20% opacity for emissions at the Conesville power plant, including, without limitation, all documents related to the "visible emissions readings" taken by EPA on November 3, 2015, November 24, 2015, December 17, 2015, and April 5, 2016, respectively.

The referenced Notice of Violation/Finding of Violation for the Conesville plant is provided here as Attachment A. To aid your search for responsive documents, I note that Eleanor Kane and Ethan Chatfield of Region 5 are listed as contacts for this NOV/FOV.

Exempt Records

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information should be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to use the requested information to inform the public, so the public can meaningfully participate in the dialog concerning pollution generated by the Conesville facility, as well as EPA's investigations related to such pollution.

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute—that "disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records concerns identifiable “operations and activities of the government.”

The activities denoted in this request are “identifiable operations or activities of the government.” The Department of Justice Freedom of Information Act Guide expressly concedes that “in most cases records possessed by a federal agency will meet this threshold” of identifiable operations or activities of the government. And, in any event, the requested documents relate to EPA enforcement of Clean Air Act requirements, which is an activity of the U.S. government.

2. The disclosure of the requested documents has an informative value and will be “likely to contribute to an understanding of Federal government operations or activities.”

The Freedom of Information Act Guide makes it clear that, in the Department of Justice’s view, the “likely to contribute” determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are “likely to contribute” to an understanding of your agency’s operations or activities because they are not otherwise in the public domain and are not accessible other than through a FOIA request. This information will facilitate meaningful public understanding of EPA’s investigation and enforcement process for alleged Clean Air Act violations, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency’s enforcement of federal environmental statutes and regulations.

3. The disclosure contributes to the understanding of the public at large.

The Sierra Club and its members have a longstanding interest and expertise in the subject of coal-fired power plants. More importantly, the Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in a broad manner, and to do so in a manner that contributes to the understanding of the “public-at-large.” The Sierra Club intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the Club’s website, emailing, and list-serve distribution to members. Such dissemination will inform the public regarding how EPA goes about investigating and enforcing Clean Air Act requirements.

4. The disclosure contributes “significantly” to public understanding of government operations or activities.

The records requested will contribute “significantly” to the public understanding of the government’s investigatory and enforcement role, and its “operations and activities” associated with the alleged Clean Air Act violations at the American Electric Power Conesville facility. Further, the disclosure of the requested records is essential to public understanding of the potential impacts of emissions from this facility. After disclosure of these records, the public’s

understanding of the potential impacts of emissions from this facility will be significantly enhanced.

5. Sierra Club has no commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

* * *

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

Record Delivery

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and the agency’s regulations. 5 U.S.C. § 552, (a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the records above by sending them to me at the address listed below. Please produce them on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

If possible, please send all documents in PDF format via electronic mail, external website, or on CD or DVD via traditional mail. Alternatively, paper copies are acceptable, but electronic format is preferred. Please send all requested records as soon as possible to:

Tony Mendoza
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
tony.mendoza@sierraclub.org

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply.

/s/ Tony G. Mendoza

Tony Mendoza
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5589
tony.mendoza@sierraclub.org

Attachment A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN - 6 2016

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John McManus
Vice President, Environmental Services
American Electric Power
1 Riverside Plaza
Columbus, Ohio 43215

Mike Zwick
Plant Manager
Conesville Power Plant, American Electric Power
47201 County Road 273
Conesville, Ohio 43811

Re: Notice of Violation and Finding of Violation
American Electric Power, Conesville Power Plant
Conesville, Ohio

Dear Mr. McManus and Mr. Zwick:

The U. S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to American Electric Power (AEP) under Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a). We find that AEP has violated and continues to violate the Ohio State Implementation Plan, the New Source Performance Standards, and AEP's Title V Operating Permit at the Conesville Power Plant, located in Conesville, Ohio.

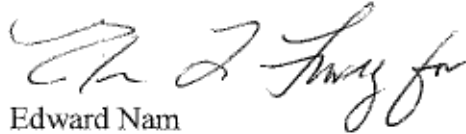
Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the attached NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violations and the steps you have taken or will take to bring Conesville Power Plant into compliance. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV/FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may also have an attorney represent you at this conference.

The EPA contacts in this matter are Eleanor Kane and Ethan Chatfield. You may call them at (312) 353-4840 or (312) 886-5112, respectively, to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed Nam", written in dark ink.

Edward Nam
Acting Director
Air and Radiation Division

Enclosure

cc:

Janet J. Henry, Deputy General Counsel
American Electric Power

Robert Hodanbosi, Chief
Division of Air Pollution Control, Ohio EPA

Melissa Witherspoon, Acting Assistant Chief
Ohio EPA/DAPC, Southeast District Office

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

American Electric Power
Conesville Power Plant
Conesville, Ohio

Proceedings Pursuant to
Sections 113(a)(1) and (a)(3)
of the Clean Air Act,
42 U.S.C. §§ 7413(a)(1) and (a)(3)

**NOTICE OF VIOLATION AND
FINDING OF VIOLATION**

EPA-5-16-OH-11

NOTICE OF VIOLATION AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice of Violation and Finding of Violation (NOV/FOV) in accordance with Sections 113(a)(1) and (a)(3) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(1) and (a)(3). The authority to issue this NOV/FOV has been delegated to the Regional Administrator of the EPA, Region 5, and redelegated to the Director of the Air and Radiation Division.

EPA finds that American Electric Power (AEP) has violated and continues to violate the Ohio State Implementation Plan (SIP), the New Source Performance Standards (NSPS), and the facility's Title V Permit at the Conesville Power Plant, located in Conesville, Ohio, as follows:

Statutory and Regulatory Background

1. The CAA is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).
2. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the CAA, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) to protect the public health and welfare.
3. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of the NAAQS. Section 110 also requires that each SIP contain adequate provisions prohibiting any source within the state from emitting any air pollutants in amounts which will interfere with attainment or maintenance of the NAAQS or cause significant deterioration of air quality in any other state. See 40 C.F.R. Part 52.

4. Section 111 of the CAA, 42 U.S.C. § 7411, requires the Administrator of the EPA to establish federal standards of performance for new sources within the list of categories of stationary sources. *See* 40 C.F.R. Part 60.
5. Section 502(b) of the CAA, 42 U.S.C. § 7661, requires the Administrator of the EPA to promulgate regulations which establish the minimum elements of a permit program to be administered by any air pollution control agency. *See* 40 C.F.R. Part 70.
6. Sections 113(a)(1) and (3) of the CAA, 42 U.S.C. §§ 7413(a)(1) and (3), provide that the Administrator may issue an administrative penalty order pursuant to Section 113(d), 42 U.S.C. § 7413(d), or bring a civil action pursuant to Section 113(b), 42 U.S.C. § 7413(b), for injunctive relief and/or civil penalties whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, an applicable implementation plan, a standard of performance and Title V of the CAA, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder. *See also* 40 C.F.R. § 52.23.

Ohio State Implementation Plan – Opacity Regulations

7. EPA approved OAC Chapter 3745-17-07(A)(1) as part of the federally enforceable Ohio SIP on June 27, 1994. 59 Fed. Reg. 27464.
8. OAC 3745-17-07(A)(1) of the Ohio SIP requires that “visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average. [The]... visible particulate emissions from any stack may exceed twenty per cent opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed sixty per cent opacity, as a six-minute average, at any time. June 27, 1994 (*See* 59 Fed. Reg. 27464).

New Source Performance Standards: Subpart D

9. Section 111(b) of the CAA, 42 U.S.C. § 7411(b), requires EPA to publish a list of categories of stationary sources and, within a year after the inclusion of a category of stationary sources in a list, to publish proposed regulations establishing Federal standards of performance for new sources within the source category. These standards are known as “new source performance standards” or “NSPS.”
10. The NSPS are national technology-based performance standards for air pollutant sources constructed or modified after a specified date. The purpose of the standards is to ensure that all new or modified sources of air pollutants will be designed to meet emission limitations achievable through the application of the best demonstrated system for emission reduction considering the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements. Section 111(a)(1) of the CAA, 42 U.S.C. § 7411(a)(1).

11. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), states that, after the effective date of standards of performance promulgated under Section 111, it is unlawful for any owner or operator of any new source to operate the source in violation of any applicable standard of performance.
12. Under Section 111 of the CAA, 42 U.S.C. § 7411, the Administrator promulgated the NSPS for Fossil-Fuel-fired Steam Generators, codified at 40 C.F.R. Part 60, Subpart D on June 13, 2007. 72 Fed. Reg. 32717.
13. 40 C.F.R. § 60.42(a)(2) of Subpart D states that “no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that exhibit greater than 20 percent opacity, except for one 6-minute period per hour of not more than 27 percent opacity.”

Title V Requirements

14. EPA promulgated full approval of the Ohio’s Title V program on August 15, 1995. *See* 40 C.F.R. Part 70, Appendix A; 60 *Fed. Reg.* 42045. Ohio’s Title V program became effective on October 1, 1995. *See* 60 *Fed. Reg.* 42045.
15. The Ohio regulations governing the Title V permitting program are codified at OAC 3745-77, and are federally enforceable pursuant to Section 113(a)(3).
16. In accordance with OAC 3745-77 of the Ohio SIP, on February 12, 1998, the Ohio Environmental Protection Agency (OEPA) issued a Final Title V Permit to the Conesville Power Plant. The Title V Permit contained the following provisions:
 - a. Part III, A.I.1 for the Unit 6 Main Boiler (B008) provides that, pursuant to 40 CFR Part 60.42(a)(2), visible particulate emissions shall not exceed 20% opacity as a six-minute average, except for not more than 6 consecutive minutes in any 60 minutes, but shall not exceed 27 percent opacity, as a 6-minute average, at any time.
 - b. Part III, A.I.1 and Part III, A.I.2.a for the Unit 6 Main Boiler (B008) provide that the unit is subject to the opacity limitations under OAC rule 3745-17-07(A), but that the limit is less stringent than the limit contained in 40 C.F.R. Part 60.

Factual Background

17. AEP is incorporated in New York.
18. AEP is a “person,” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
19. The Conesville Power Plant is located at 47201 County Road 273, Conesville, Ohio, which is in Coshocton County.

20. AEP operates three coal-fired boilers at the Conesville Power Plant, identified as Unit 4 (B004), Unit 5 (B007), and Unit 6 (B008). Units 5 and 6 are sister units that exhaust to the same stack.
21. Units 5 and 6 are 375 MW electric utility steam generating units each having a nominal capacity of 4,091 mmBtu/hr and began commercial operation in 1976 and 1978, respectively. Both boilers are subject to NSPS Subpart D.
22. On November 3, 2015, EPA took visible emissions readings of the Unit 6 stack in accordance with EPA Method 9 and Method Alt-082 and observed a maximum 6-minute average opacity of 78%. Opacity was recorded to be over 60% at each observation.
23. On November 24, 2015, EPA took visible emissions readings of the Unit 6 stack in accordance with EPA Method 9 and Method Alt-082 and observed a maximum 6-minute average opacity of 74%. Opacity was recorded to be over 45% at each observation.
24. On December 17, 2015, EPA took visible emissions readings of the Unit 6 stack in accordance with EPA Method 9 and observed a maximum 6-minute average opacity of 49%. Opacity was recorded to be over 30% at each observation.
25. On April 5, 2016, EPA took visible emissions readings of the Unit 6 stack in accordance with EPA Method 9 and observed a maximum 6-minute average opacity of 59%. Opacity was recorded to be over 30% at each observation. This excess emissions period appeared to continue beyond EPA's observation period above, and was noted during and after the CAA inspection that followed these opacity readings.

Alleged Violations

26. AEP violated and continues to violate OAC 3745-17-07(A)(1)(a) of the Ohio SIP, NSPS Subpart D, and the Title V Permit at the Conesville Power Plant by exceeding 20% opacity, as a six-minute average, on an ongoing basis.
27. Pursuant to Section 113(e) of the CAA, the violations set forth in Paragraph 26 above are presumed to continue each day until AEP establishes continuous compliance except to the extent that AEP can prove by a preponderance of the evidence that there were intervening days during which no violations occurred.

Environmental Impact of Violations

28. Violation of the opacity limits increases public exposure to unhealthy particulate matter. Particulate matter, especially fine particulate, contributes to respiratory problems, lung damage, and premature deaths.

Date

6/06/16

Edward Nam

Acting Director

Air and Radiation Division



CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice of Violation and Finding of Violation, No. EPA-5-16-OH-11, by Certified Mail, Return Receipt Requested, to:

Mike Zwick
Plant Manager
Conesville Power Plant, American Electric Power
47201 County Road 273
Conesville, Ohio 43811

John McManus
Vice President, Environmental Services
American Electric Power
1 Riverside Plaza
Columbus, Ohio 43215-2373

~7014 2870 0001 9577 8314

I also certify that I sent a copy of the Notice of Violation and Finding of Violation by First-Class Mail to:

Janet J. Henry
Deputy General Counsel
American Electric Power
1 Riverside Plaza
Columbus, OH 43215

Robert Hodanbosi, Chief
Division of Air Pollution Control, Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

Melissa Witherspoon, Acting Assistant Chief
Ohio EPA/DAPC, Southeast District Office
2195 Front Street
Logan, Ohio 43138

On the 8 day of June 2016.


Loretta Shaffer
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7014 2870 0001 9577 8286